

## REMARKS

This Reply is in response to the Office Action mailed on October 10, 2006 in which claims 20-85 were withdrawn from consideration and in which claims 1-19 were rejected. With this response, claims 20-85 are canceled; claims 15 and 19 are amended and claims 86-123 are added. Claims 1-19 and 86-123 are presented for reconsideration and allowance.

### I. Rejection of Claims 15 and 19 under 35 USC 112, Second Paragraph

Section 3 of the Office Action rejected claims 15 and 19 under 35 USC section 112, second paragraph, as being indefinite for failing to perfectly point out and distinctly claim the subject matter of the invention. Claims 15 and 19, as amended, overcome the rejection.

With respect to claim 15, the Office Action asserts it is not clear whether the opening is a means for enabling rotation of at least one of the batteries or if it is a separate structure. In response, claim 15 is amended to depend from claim 1, thereby addressing this confusion.

With respect to claim 19, the Office Action asserts that the phrases "etc." and "not previously relating to a battery and such or to use" are vague and indefinite. In response, the phrase "etc." is deleted. Applicants respectfully note that the phrase "not previously related to a battery and/or its use" is not vague and is not indefinite. MPEP 2173.05(i) specifically states:

There is nothing inherently ambiguous or uncertain about a negative limitation. So long as the boundaries of the patent protection sought are set forth definitely, albeit negatively, the claim complies with the requirements of 35 U.S.C. 112, second paragraph.

In the present case, the negative limitation "not previously related to a battery and such or its use" has a basis in the original disclosure. This basis is found in both the originally filed claims (claim 19) and in the specification (Specification, Par. [0027]). Moreover, one of ordinary skill in the art clearly knows the meaning of this limitation. One of ordinary skill in the art clearly knows whether a graphic is related to the battery itself, such as the source of the

battery (trademark, trade dress, brand) or characteristics of the battery. This is especially clear and definite in light of the extensive discussion in the specification describing and comparing graphics or information that do relate to the battery versus graphics that do not relate to the battery. For example, Paragraph [0027] of the Specification states:

Graphic component 338 is preferably configured so as to be unrelated to battery 326 in that graphic component 330 does not identify a manufacturer, distributor or retailer of the battery, that does not describe a size or power characteristic of the battery, that does not identify an intended or suggested use of the battery such as identifying a type of electronic gadget or appliance in which battery 26 may be used, that does not describe a composition of the battery, that does not describe a polarity of the battery, that is not associated with information regarding the useful life of the battery, that is not associated with warnings about the usage or disposal of the battery, that does not identify intellectual property associated with the battery (for example, a patent number, a patent pending notification, a trademark symbol (<sup>TM</sup>, ®), a copyright symbol (©)), and does not provide information regarding the recyclability of the battery. Graphic component 38 also does not identify ideal uses for battery 26. Although less desirable, in some embodiments, graphic component 330 may alternatively be associated with information pertaining to the characteristic of battery 326. For example, graphic component 330 may less desirably comprise a trademark logo or a trademark design.

(Emphasis added). Paragraph [0007] of the application recites:

Unlike conventional battery graphics, graphic 36 includes a graphic component 38 that does not identify a manufacturer, distributor or retailer of the battery, that does not describe a size or power characteristic of the battery, that does not identify an intended or suggested use of the battery such as identifying a type of electronic gadget or appliance in which battery 26 may be used, that does not describe a composition of the battery, that does not describe a polarity of the battery, that is not associated with information regarding the useful life of the battery, that is not associated with warnings about the usage or disposal of the battery, that does not identify intellectual property associated with the battery, and does not provide information regarding the recyclability of the battery. Graphic component 38 also does not identify ideal uses for battery

26. Instead, graphic component 38 comprises one or more alphanumeric symbols, an image or an abstract design, or combinations thereof, that has generally nothing to do with battery 26 itself.

(Emphasis added). Because one of ordinary skill in the art would clearly understand the meets and bounds of the claim, especially in light of the specification, the rejection of claim 19 under this basis should be withdrawn.

## II. Rejection of Claims 1-9, 16 and 18 under 35 USC 102(b) Based upon Kumakura

Section 5 of the Office Action rejected claims 1-9, 16 and 18 under 35 USC 102(b) as being anticipated by Kumakura US Patent 5,735,404. For the reasons which follow, Applicants respectfully request that the rejection be withdrawn.

### A. Claim 1

Claim 1 recites a first battery having a first outer surface with a first graphic and a second battery substantially identical to the first battery in all respects except that the second battery has a second outer surface with a second graphic distinct from the first graphic.

Kumakura fails to disclose two batteries which are substantially identical in all respects except that the two batteries have distinct graphics. In contrast, Kumakura seemingly discloses two identical batteries having the same outer surface and the same graphics.

In rejecting claim 1, the Office Action asserts that batteries normally a plus and minus signs as part of the standard outer surface design. The Office Action further asserts that the first graphic of a plus sign on a first battery would be distinct from the second graphic of a minus sign on a second battery. However, this construction of Kumakura so as to read on claim 1 improperly ignores the explicit definition of "graphic" set forth in the present application. As noted in the specification:

For purposes of this disclosure, the term "graphic" means the overall visual appearance on the outside of the battery.

(Specification, Par. [0005]) (Emphasis added). The Specification further goes on to describe graphic components which together form the graphic which provides the overall visual appearance of the battery. The "plus sign" and the "minus sign" represent graphic components on the battery. The "plus sign" and the "minus sign" do not provide the overall visual appearance on the outside of the battery. Nothing in Kumakura discloses or suggests that the batteries have different overall visual appearances. The position asserted in the Office Action is analogous to stating that two identical copies of the Mona Lisa are different because one copy has eyes and the other copy has lips. In the present case, the overall visual appearance of the two batteries disclosed by Kumakura would seem to have substantially identical overall visual appearances. Thus, the rejection of claim 1 based upon Kumakura should be withdrawn. The rejection of claims 2-9, 16 and 18, which depend from claim 1 should be withdrawn for the same reasons.

B. Claims 4 and 7

Claims 4 and 7 additionally recite that the first battery and the second battery are substantially aligned end-to-end in the packaging.

Kumakura clearly fails to show two batteries aligned end-to-end in the packaging. One of order is coming are clearly knows what is an "end" of the battery. The batteries of Kumakura are positioned side-by-side, not end-to-end. Thus, the rejection of claims 4 and 7 should be withdrawn for this additional reason.

C. Claims 6 and 9

Claims 6 and 9 additionally recite that the packaging includes a tube containing all of the batteries.

Nowhere does Kumakura disclose a tube containing all the batteries. In contrast, Kumakura discloses shrink wrap about the batteries in the shrink wrap batteries deposited in a

rectangular container. Accordingly, the rejection of claims 6 and 9 should be withdrawn for this additional reason.

D. Claim 16

Claim 16 additional recites that the packaging includes a flexible membrane configured to engage at least one of the first battery and the second battery to facilitate rotation of at least one of the first battery and the second battery.

Kumakura fails to disclose a packaging having a flexible membrane which is configured to engage at least one of the first battery and the second battery to facilitate rotation of at least one of the first battery and the second battery. In contrast, Kumakura discloses a tight shrink package. No word as Kumakura disclose that it's tight shrink package is configured to facilitate rotation of any of the batteries. In fact, Kumakura specifically teaches the opposite. Kumakura specifically states:

The batteries 40 are tightly shrink-packed with all front faces in the same direction and fixed to each other. Thereby, the batteries 40 do not rotate in the battery package 1 after packing in the battery package 1.

(Kumakura, column 5, lines 26-31). Moreover, it would not be out is to modify Kumakura to permit rotation of the batteries. The whole point of Kumakura using shrink packaging is to prevent rotation of the batteries such that the front faces are all aligned with one another. In contrast, Claim 16 reciting membrane which facilitates rotation of the batteries. As noted in the Specification, this enables a person to better view the graphics extending at least partially about the battery. Accordingly, the rejection of claim 16 should be withdrawn for this additional reason.

III. Rejections of Claims 1, 10-15, 17 and 19 under 35 USC 103 Based upon Watterson

Section 8 of the Office Action rejected claims 1, 10-15, 17 and 19 under 35 USC 103 as being unpatentable over Watterson US Patent Publication 2002/0149928. For the reasons which follow, Applicants respectfully request that the rejection be withdrawn.

A. Claim 1

Claim 1 recites a battery bundle having a first battery with a first graphic, a second battery substantially identical to the first battery in all respects except that second battery has a second graphic distinct from the first graphic and a packaging binding the first battery and the second battery.

Watterson fails to disclose a battery bundle having to batteries which are substantially identical to one another in all respects except that the batteries have distinct graphics. In acknowledgment that Watterson fails to disclose a battery bundle having to batteries substantially identical to one another in all respects except for that the batteries have different graphics, the Office Action asserts that is well-known and would be obvious to use different brand the batteries together in a cartridge, whereby the graphics on the different brands a batteries will be distinct from one another. However, if different brands of batteries are used together, these two batteries would not be "substantially identical to one another in all respects except for that the batteries have different graphics". As one of ordinary skill in the art knows, different brands of batteries are different other than their distinct trade dress or trademarks. Different brands of batteries would presumably have different characteristics or levels of quality.

Moreover, Watterson does not disclose a packaging binding the first battery and the second battery. In contrast, Watterson discloses a cartridge. As one of ordinary skill in the art knows, a packaging is something that is used to pack, wrap or box one or more articles. A frame, housing or cartridge which is an operational part of an electrical device is not a "packaging". Accordingly, for either of these two reasons, the rejection of claim 1 based upon Watterson should be withdrawn. The rejection of claims 10-15, 17 and 19, which depend from claim 1, should be withdrawn for the same reasons.

B. Claim 10

Claim 10 additional recites at the packaging has a least one aperture adjacent to at least portions of the first graphic and the second graphic.

Watterson fails to disclose any pitcher extending to both the first graphic and the second graphic is clearly illustrated by Figure 2, the cartridge opening as an axial length insufficient to facilitate viewing of more than one battery at a time. Thus, the cartridge opening does not extend adjacent to both the first graphic and a second graphic. Accordingly, the rejection of claim 10 should be withdrawn for this additional reason.

C. Claim 17

Claim 17 additional recites that the first battery and a second battery have at least one of a distinct smell or distinct outer surface texture.

Watterson fails to disclose a battery bundle having to batteries, wherein the two batteries have distinct outer surface textures or distinct scents. In rejecting claim 17, the Office Action attempt to rely upon the assertion that "all batteries have a outer surface texture." This is obviously true; however, the surface texture of all such batteries is substantially the same. The Office Action has failed to establish a prima facie case of obviousness with respect to claim 17. Accordingly, the rejection of claim 17 should be withdrawn for this additional reason.

D. Claim 19

Claim 19 additional recites that at least one of the first graphic and the second graphic are selected from the group including: cartoon characters, entertainment personalities, sporting figures, cars, sporting equipment, well-known phrases, clichés, barbershop stripes, artwork, paper and coin currency, gaming characters, music media artwork, movie media artwork, advertising for non-battery goods or services, motivational sayings, flags, inspirational sayings, humorous

sayings, campaign slogans, sayings, or representations or reproductions of images (finger, cigarette, money roll) not previously related to a battery and/or its use.

Watterson fails to disclose that its batteries would include any of the noted graphics. In contrast, as with all presently available batteries, any graphic on such batteries would be related to the battery itself and/or its use. Accordingly, the rejection of claim 19 should be withdrawn for this additional reason.

#### IV. Added Claims

With this response, claims 86-123 are added. Claims 86-123 are believed to be patentably distinct or the part of record and are presented for consideration and allowance. Each of such claims ultimately depends from claim 1 and is patentably distinct or the part of record for the reasons discussed above with respect to claim 1. Each of such claims recites additional features which further patentably distinguish such claims over the prior art to record.

#### V. Conclusion

After amending the claims as set forth above, claims 1-19 and 86-123 are now pending in this application.

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-3815. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit



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Account No. 50-3815. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-3815.

Respectfully submitted,

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